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No. 216

In the Supreme Court of the United States

OCTOBER TERM, 1968

PATRICK G. MARTONE,

Appellant,

v.

CECIL MORGAN, WILLIAM REDMANN, ANDREW P. TUGWELL, J. B. LANCASTER, AND JOHN JULIAN MCKEITHEN,

Appellees.

On Appeal from the Supreme Court of the State of Louisiana

MOTION TO AFFIRM

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INDEX

PAGE

Citation to Opinion Below 1

Jurisdiction 2

Question Presented 2

Statement of the Case 2

Argument—

Statute Creating Commission to Investigate Possible Violations of Criminal Laws, Which Commission Was Merely a Fact-finding Body and Could Not Adjudicate, Was Not in Violation of the Due Process Clause of Fourteenth Amendment in Denying Confrontation, Assistance of Counsel and Compulsory Process for Obtaining Witnesses 3

Conclusion 5

Table of Cases

Hannah v. Larche, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307 ..... 3, 4

Statutes and Regulations

28 U.S.C. 1257(2) 2

Act 2 of the Extraordinary Session of the Legislature of Louisiana of 1967 (LSA-R.S. 23:-880.1-880.18) 2

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Appellees Cecil Morgan (now Jay Taylor), et al, respectfully move the Court, pursuant to Rule 16(1)(d) of the Rules of the Court, to affirm the judgment below and in support thereof would show that plenary consideration of this appeal is unnecessary because the decision below is clearly correct.

CITATION TO OPINION BELOW

The judgment below and the opinion supporting it of February 19, 1968, and rehearing denial of March 25, 1968, is reported at 251 La. 993, 207 So. 2d 770.

JURISDICTION

Jurisdiction of this appeal is founded upon 28 U.S.C. 1257(2), in that injunctive relief was sought by plaintiff against the enforcement of a statute of the State of Louisiana on the ground that it violates the Constitution of the United States and was denied by the Supreme Court of Louisiana.

QUESTION PRESENTED

Do procedural rules of a commission, whose function is purely investigative and is without authority to adjudicate, violate due process in denying witnesses before it the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses?

STATEMENT OF THE CASE

This action was commenced on December 15, 1967, challenging the constitutionality of Act 2 of the Extraordinary Session of the Legislature of Louisiana of 1967 (R.S. 23:880.1-880.18) which created a commission denominated as the "Labor-Management Commission of Inquiry" to investigate and find facts relating to violations or possible violations of the criminal laws of the State of Louisiana or of the United States arising out of or in connection with matters in the field of labor-management relations.

The plaintiff alleged that the Commission of Inquiry had scheduled hearings in which plaintiff's conduct was to be inquired into. Plaintiff claimed the statute violated the due process of the Fourteenth Amendment in that the plaintiff, in said investigation,

would be denied by the statute the right of confrontation, assistance of counsel and compulsory process for obtaining witnesses.

The Supreme Court of Louisiana found that this Commission could only investigate and report and could not adjudicate, and then held that *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, was decisive on the issue raised by plaintiff and stated that the Louisiana Legislature had drafted the rules of procedure for the Commission "in strict accordance with the views expressed by the majority opinion" in that case, and, accordingly, dismissed the plaintiff's suit.

Notice of Appeal was filed in the Supreme Court of Louisiana on June 10, 1968, and plaintiff's statement as to Jurisdiction was filed June 20, 1968.

ARGUMENT

Statute Creating Commission to Investigate Possible Violations of Criminal Laws, Which Commission Was Merely a Fact-Finding Body and Could Not Adjudicate, Was Not in Violation of the Due Process Clause of Fourteenth Amendment in Denying Confrontation, Assistance of Counsel and Compulsory Process for Obtaining Witnesses.

According to the preamble of the Act, this Commission of Inquiry was conceived and created to examine the causes for the unprecedented conditions existing in the State of Louisiana in the field of labor-management relations under which, by reason of sus-

pected violations of the State and Federal criminal laws, there had been a shutdown of construction work involving industrial development projects furnishing employment to thousands of persons, that the then present conditions vitally affected the public interest and threatened to disrupt the conduct of normal labor-management relations. It was further stated that, in view of the then presently existing conditions, the public interest required that the causes thereof be investigated on a statewide basis as a supplement to assist activities of the district attorneys, grand juries and other law enforcement officials and agencies of the State of Louisiana and of the United States. The Commission was required to report to the Louisiana Legislature, the Governor, the Lieutenant-Governor and the Attorney General.

The statute granted limited power to the Commission, declaring ". . . it shall be investigatory and fact finding only . . .", and the statute provided that "The commission shall have no authority to and it shall make no binding adjudication . . . ."

Inasmuch as the power of this commission was limited by the statute to investigating and reporting and the statute did not authorize the commission to adjudicate on matters affecting the life, liberty or property of the person under investigation, just as the statute which created the Civil Rights Commission before the Court in *Hannah v. Larche*, 363 U.S. 420, 80 S. Ct. 1502, 4 L. Ed. 2d 1307, and inasmuch as the rules of procedure for the investigations to be conducted by this commission were identical to those of

the Civil Rights Commission, the issues in this case are identical with those in Hannah, where the statute was held constitutional, we submit that the questions on which this cause depends are so unsubstantial as not to need further argument.

The Supreme Court of Louisiana, in deciding the question presented by this appeal, in following *Hannah v. Larche*, said:

> "This Court not only shares the majority view (of *Hannah v. Larche*) but, were it otherwise, we would perforce be bound to follow it."

CONCLUSION

For the foregoing reasons, the judgment appealed should be affirmed.

Respectfully submitted,

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PROOF OF SERVICE

I, Ashton L. Stewart, Special Assistant Attorney General of the State of Louisiana, attorney for appellees herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the 10 day of July, 1968, I served a copy of the foregoing motion to affirm on the appellant herein, by mailing said copy in a duly addressed envelope with first class postage prepaid to his attorney of record, J. Minos Simon, Esquire, 1408 Pinhook Road, Post Office Box 52116, OCS, Lafayette Louisiana 70501.

Baton Rouge, Louisiana, this 10 day of July, 1968.

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B-1449, 7-68